
Appeal Decision

Hearing opened on 18 June 2025

Site visit made on 13 August 2025

by David Prentis BA BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th September 2025

Appeal Ref: APP/X0360/W/25/3359928

Land at Heathlands Road, Wokingham RG40 3AR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
 - The appeal is made by Maverick Properties Ltd against the decision of Wokingham Borough Council.
 - The application reference is 240831.
 - The development proposed is an outline application for the redevelopment of the site for 49 dwellings with associated access, infrastructure, open space and landscaping (All matters reserved except means of access into the site).
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for a partial award of costs was made by Maverick Properties Ltd against Wokingham Borough Council. An application for a partial award of costs was also made by Wokingham Borough Council against Maverick Properties Ltd. These applications are the subject of separate decisions. The applications were made at the Hearing. I arranged a procedure for responses and final comments to be made in writing at later dates.

Preliminary matters

3. The Hearing sat for 3 days on 18 and 19 June 2025 and on 12 August 2025. Due to the lack of a suitable venue, Day 3 was conducted as a virtual session. With the agreement of the parties, I carried out an unaccompanied site visit on 13 August 2025.
4. The application was submitted in outline with only the means of access to be determined at this stage. Appearance, landscaping, layout and scale would be reserved matters. The application was supported by an indicative masterplan which was updated during the appeal process, together with 3-D visualisations. I have had regard to this material, taking account of its illustrative status.
5. On Day 1 the appellant sought to introduce a number of additional documents. Having had an opportunity to consider these before the Hearing resumed on Day 2, the Council indicated that it was content for some of them to be accepted.¹ However, I considered that documents relating to the calculation of buffer zones and root protection areas around an oak tree² introduced new technical material

¹ HD8 to HD13

² HD14 to HD18

that the Council would need more time to consider and comment on. I therefore instituted a written procedure for comments on this material. As things turned out, the Hearing was not completed on Day 2 and the written procedure took place during the adjournment.

6. When the Hearing resumed on Day 3, I pointed out that both the Council and the appellant had submitted further evidence on various matters that were not included in the written procedure that I had put in place. However, I considered that any potential procedural unfairness had been addressed by the fact that this had been a two stage process and also because, by then, common ground had been reached on what the buffer zone would be if either the Council's or the appellant's approach were preferred. The Council and the appellant agreed that, in all the circumstances, it would be appropriate for me to take account of the documents submitted during the adjournment on the basis that they did not change any written or oral evidence given on Day 1 and Day 2. They were to be read as additional information alongside that evidence. I have taken the adjournment documents into account on that basis.
7. Discussions on a section 106 Agreement (the Agreement) continued during the Hearing. I allowed a period following the Hearing for the document to be signed. The completed version of the Agreement was the same as that discussed on Day 3. It includes financial contributions relating to:
 - allotments;
 - bus stop improvements;
 - bus service enhancements; and
 - off-site sports facilities.
8. The Agreement also includes the following provisions:
 - 40% of the dwellings would be delivered as affordable housing, of which 70% would be social rented housing and 30% would be shared ownership housing;
 - an open space scheme would be submitted for the approval of the Council, together with arrangements for securing public access to the open space and for future management and maintenance. The Agreement would provide either for the delivery of a local equipped area for play on site or for a financial contribution to off-site play areas;
 - either an employment and skills plan would be submitted for the approval of the Council or there would be a financial contribution to employment and skills initiatives;
 - the estate roads would be constructed to adoptable standards, either subject to a highways agreement or for subsequent transfer to a management company;
 - arrangements for implementing and monitoring biodiversity enhancements associated with the Biodiversity Gain Plan, Habitat Monitoring and Management Plan and Compensation Habitat Scheme, including payment of a monitoring fee to the Council;

- arrangements for securing off-site suitable alternative natural greenspace to mitigate impacts on the Thames Basin Heaths Special Protection Area (TBH SPA), together with a financial contribution to strategic access management and monitoring; and
 - submission of a travel plan, together with arrangements for implementing and monitoring the plan and a financial contribution to monitoring by the Council.
9. The Council submitted a statement of compliance with Regulation 122 of the Community Infrastructure Levy Regulations 2010. This explained the policy basis for the various obligations and set out how the financial contributions had been calculated. The obligations were not controversial and no party at the Hearing suggested that any of them would not comply with Regulation 122. I comment below on the weight to be attached to the obligations relating to bus stops, bus service enhancements and the travel plan. Otherwise, I see no reason to take a different view in relation to the obligations and I have taken them into account accordingly.
10. The Agreement resolved reasons for refusal (7) (affordable housing), (8) (employment and skills training), (9) (public open space and estate roads) and (10) (TBH SPA). These reasons for refusal were not pursued at the Hearing. Reason for refusal (3) referred, in part, to the Gorrick Plantation Local Wildlife Site. This part of the reason for refusal was not pursued but the Council maintained its objection in relation to species of principal importance.

Main issues

11. The main issues are:

- a) whether the appeal site is an appropriate location for the proposed development, having regard to the spatial strategy of the development plan;
- b) the effect of the proposal on the character and appearance of the area;
- c) the effect of the proposal on trees;
- d) the effect of the proposal on biodiversity;
- e) whether the appeal site is in a location that is, or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes; and
- f) whether the proposal would provide satisfactory living conditions for future occupiers.

Reasons

Spatial strategy

12. The development plan includes:

- Wokingham Borough Council Core Strategy (adopted 2010) (CS); and
- Wokingham Borough Managing Development Delivery Local Plan (adopted 2014) (MDD).

13. The Central and Eastern Berkshire Minerals and Waste Plan (adopted 2023) also forms part of the development plan, although it does not contain any policies relevant to the appeal. Saved Policy NRM6 of the South East Plan, which deals with the TBH SPA, is referred to below. The Local Plan Update: Proposed Submission Plan was published in September 2024 and the Regulation 19 consultation was closed in November 2024. At the time of the Hearing the plan had been submitted for examination but no hearing dates had been set. I consider that only limited weight can be attached to the policies of the Local Plan Update (LPU), given the stage that the examination has reached.
14. CS Policy CP9 states that the scale and location of development proposals must reflect the level of services and facilities at the location. Development proposals within development limits will be acceptable in various major, modest and limited development locations which are identified in the policy. It was common ground that the application site is not within any of those locations and is located outside of the development limits, within the countryside. It would therefore be contrary to the spatial objectives of the development plan and in conflict with Policy CP9.
15. CS Policy CP11 states that proposals outside development limits will not normally be permitted except where certain exceptions apply. It was common ground that the appeal scheme does not meet any of these exceptions. Nevertheless, the appellant argued that the use of the word “normally” would enable development to be permitted in accordance with CP11 where it would be consistent with the purposes of the policy. The purposes of the policy are to protect the separate identity of settlements and to maintain the quality of the environment. The Council accepted that the appeal scheme would not harm the separate identity of settlements and I share that view. However, the Council maintained that the proposal would be harmful to the environment. I agree, for reasons which are explained below. Looking at CP11 as a whole, I consider that the appeal scheme would be in conflict with this policy.
16. MDD Policy CC02 states that development limits for each settlement are defined on the Policies Map. As noted above, it was agreed that the site is outside any such limits. The statement of common ground records the appellant’s acceptance that there would be conflict with Policy CC02. At the Hearing, the appellant suggested that the policy allows for some flexibility and that the proposal would respect the transition between the built up area and the countryside. Whilst this is a factor mentioned in part (2) of Policy CC02, it is mentioned in the context of proposals that are at the edge of settlements but within development limits. The proposal therefore gains no support from this part of the policy.
17. Not only is the site outside any development limits, it is also not adjacent to any defined settlement. It is well separated from Crowthorne, which is the nearest settlement. The appellant drew attention to the LPU, which is seeking to extend the development limits to the south of Wokingham, around 1.6km to the north of the appeal site. I saw that development is in fact underway in parts of this area. However, the appeal site is physically separate from the urban area of Wokingham.
18. The appellant also argued that the development limits of Crowthorne should be amended through the LPU process to include a site called Pine Copse, together with ribbon development along Nine Mile Ride to the south and south west of the appeal site. If that were done, the appeal site would be adjacent to the settlement limits of Crowthorne. I attach very little weight to this suggestion. The site is not

within the settlement boundary as defined in the development plan, nor is there any such proposal in the LPU. It is not for me to comment, in this appeal decision, on matters which may be considered through the LPU examination process.

19. To my mind, the proposal would be poorly located in relation to the existing pattern of development, having no obvious relationship with existing settlements.
20. A recent appeal decision relating to land adjacent to Blagrove Lane, Wokingham,³ found that CS Policies CP9 and CP11 and MDD Policy CC02 are out-of-date because the CS was based on the housing requirements of the South East Plan, prior to the first publication of the National Planning Policy Framework (the Framework) in 2012. The CS has not yet been updated and the housing requirement has increased with the introduction of the standard method. The Council and the appellant agree that, taking account of the latest standard method (December 2024) and the latest supply position, the total deliverable housing supply demonstrated in the 2025 five year housing land supply position statement is 2.5 years⁴. I agree with the Blagrove Lane Inspector that Policies CP9, CP11 and CC02 are inconsistent with the delivery of the level of housing that is required by the Framework. I also agree that this does not mean that any conflict with these out-of-date policies should carry little or no weight. Weight is to be determined the light of the particular circumstances of this appeal.
21. I conclude that this is not an appropriate location for the proposed development, having regard to the spatial strategy of the development plan. It would conflict with Policies CP9, CP11 and CC02. The proposal would be poorly located in relation to the existing pattern of development.

Character and appearance

22. The appeal site extends to around 2ha, mainly comprised of open grassland, located to the west of Heathlands Road. There are some trees along the boundary to Heathlands Road, together with the stools of two large oak trees (referred to as Oak 1 and Oak 2 at the Hearing). To the north east, there is a detached house and garden known as Sulby Croft. The rest of the northern boundary adjoins woodland forming part of Gorrick Plantation, a local wildlife site. There is a woodland belt to the west of the site, beyond which there are playing fields and tennis courts. To the south, there is a block of woodland, a cemetery and St Sebastian's School. The trees around the site boundaries, including Oak 1 and Oak 2, are covered by a Tree Preservation Order (TPO).⁵ There is some ornamental planting in the northern part of the site which is not covered by the TPO.
23. To the east, on the opposite side of Heathlands Road, is a development of 16 houses set in landscaped grounds (Heathlands Court). The wider surroundings include areas of woodland, to the north and south of Nine Mile Ride. There is ribbon development along the north side of Nine Mile Ride, to the west of its junction with Heathlands Road. There is also a loose cluster of houses along Hatch Ride, to the north east of the appeal site, and some individual detached houses accessed from Heathlands Road.

³ APP/X0360/W/24/3354667 – Appendix 42 to the Council's Statement of Case

⁴ For the period 1 April 2025 to 31 March 2030

⁵ Tree Preservation Order 1961/2024 was made on 21 March 2024 and confirmed on 16 September 2024

Whether the appeal site forms part of a valued landscape

24. The Framework states that planning decisions should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes. Whilst this is to be done in a manner commensurate with their identified quality in a development plan, the appellant accepted that it is not necessary for a valued landscape to be designated in a development plan for it to be treated as such for development management purposes.⁶ The appellant considers that the site has a medium-high level of landscape value, which is below the level of a valued landscape.
25. The Council has produced a Valued Landscape Assessment (2022) (VLA) which assesses landscapes across the borough with a view to identifying areas that may be designated as valued landscapes in the LPU. The appeal site is within the Forest and Rides Valued Landscape, as proposed in the LPU. For the reasons given above, I attach limited weight to the proposed designation. Moreover, it is not for me to comment on whether this area ought to be designated as that will be a matter for the LPU examination. However, it is necessary for me to form a view on whether the attributes on the ground indicate that this should be regarded as a valued landscape for the purposes of this appeal. In making that assessment, I have taken the VLA into account, together with the other evidence before the Hearing.
26. The site is within the M1: Finchampstead Forested and Settled Sands Landscape Character Area (LCA) of the Wokingham Borough Landscape Character Assessment (2019). The character is described as that of an elevated plateau characterised by its densely wooded context, which creates a strong sense of enclosure. The assessment notes that low density settlement is arranged along linear rides or in the settlements of Finchampstead and part of Crowthorne. The key characteristics are said to include large swathes of interconnected forestry and woodland which dominate the area, long straight roads such as Nine Mile Ride (which originated as historic rides through the then open landscape of the Royal Forest of Windsor), a strong settlement character, with a low density pattern of detached houses lining the historic rides, good public accessibility and localised areas of remoteness within woodlands which provide a sense of tranquillity.
27. This assessment of the LCA was not disputed by the appellant and it is consistent with what I saw on my visit to the area. However, the appellant sought to distinguish the character of the immediate surroundings of the appeal site from that of the wider LCA, drawing attention to various developments that have taken place. I have noted above the residential development at Heathlands Court. That development is enclosed within extensive well-treed grounds, such that it has very little impact on the character and appearance of the locality. I saw that there is a block of apartments at St Sebastian's Court, facing Nine Mile Ride, which replaced a former public house. There is also a cul-de-sac of semi-detached houses at Grove Close, a little further along Nine Mile Ride. Those dwellings are sited well back from Nine Mile Ride and are set within generous plots.
28. To my mind, the existence of some different development typologies in the locality does not significantly alter the predominant settlement pattern, which is a low density pattern of detached houses lining the historic rides. The detached houses

⁶ Inspector's note – this was confirmed by Mr Kirkpatrick in answer to my question. It is consistent with the approach of Inspectors in various appeal decisions set out in Appendix CH10 to the Council's Landscape Statement of Case

closest to the appeal site are contained within large and well-treed plots, set back from the road frontages. As one moves through the locality, the defining characteristics are the dominance of forestry and woodland and the distinctive character of the straight rides. These provide long views, framed by trees, through a generally enclosed landscape. In my view the appeal site and its surroundings are characteristic of the LCA of which they form a part.

29. The Council considers that Heathlands Road is a historic ride, which is representative of the more open hunting landscape that preceded the forestry plantations of the 19th and 20th centuries. The appellant disagrees, relying on the Ordnance Survey Old Series Map 1816 – 1830 which does not show a road or track here. However, the more detailed Berkshire Inclosures Map of 1817 does show a road or track where Heathlands Road is today. Moreover, a similar road is shown in earlier maps such as Roques map of 1761 and Prides map of 1790. It is also shown on the later Henry Walter map of 1823. On the balance of the evidence, I consider that Heathlands Road should be regarded as being a historic ride. In any event, even if it is not, it has the landscape character of historic rides such as Nine Mile Ride.
30. The Guidelines for Landscape and Visual Assessment include a range of factors that can help in the identification of valued landscapes. I have made my own assessment of the site and its surrounding landscape having regard to those factors. The LCA notes that the condition of the landscape in area M1 is good, due to the well-managed nature of the woodlands. The area has undoubted scenic quality, with its swathes of interconnected forestry and woodland, interspersed with more open areas (such as the appeal site), together with the long, straight roads such as Nine Mile Ride and Heathlands Road. These roads form strong and distinctive elements in the landscape. They are representative, in that they recall the historic use of the area as a royal hunting ground. Moreover, they are also representative of the landscape as it has evolved since the early 19th century.
31. Features of conservation importance in the locality include the Heath Lake Site of Special Scientific Interest and the Gorrick Plantation Local Wildlife Site. There are ancient and veteran trees at Ravenswood Park, which is also of cultural importance as a historic park and garden. The LCA notes that the area has good public accessibility for informal recreation via a network of footpaths and bridleways. Perceptually, footpaths, bridleways and access land enable people to experience localised areas of remoteness. In terms of historical associations, the landscape is particularly associated with Queen Anne and King George III, who used the carriage rides to watch hunting.
32. Drawing all this together, I consider that the attributes I have identified are such that, for the purposes of this appeal decision, the landscape around the appeal site should be regarded as a valued landscape in the terms of paragraph 187(a) of the Framework. Not all of the attributes are found within the appeal site itself. For example, there are no nature conservation designations within the site, nor is there any public access to it. Nevertheless, the site is an integral part of the surrounding landscape that does contain those attributes. Moreover, the open grassland of the site, which contrasts with the fine trees adjoining it, is characteristic of that landscape and makes a positive contribution to it.

The effect of the appeal proposal

33. The appellant has provided an updated indicative masterplan (UIM), together with 3-D visualisations, which help to show the effect of accommodating the amount of development proposed on the appeal site. I appreciate that the UIM shows only one way in which the site could be laid out. Nevertheless, it is a detailed plan, which has no doubt been produced with due professional care to show a realistic scenario. The site would be transformed from open grassland to a medium density residential estate in which most of the land would be taken up with buildings, roads, driveways, footways, verges and private gardens. This would be an essentially urban form of development, incorporating terraced housing and some apartment blocks, arranged to front the estate roads.
34. The surroundings are rural in character, albeit that some settlement is readily apparent with a low density pattern of detached houses lining the historic rides. The scale, form and character of the proposed development, which would include development in depth extending far back from Heathlands Road, would stand in stark contrast to the predominant settlement pattern. It would appear out of keeping and would cause significant harm to the character and appearance of the area.
35. The appellant submitted a landscape and visual assessment which concluded that there would be a low magnitude of adverse landscape impact on LCA M1 in year one, reducing to neutral by year fifteen. The assessment found that there would be medium visual impacts in year one for users of Heathlands Road, visitors to the cemetery and for houses to the south of the site. These effects would reduce to low by year fifteen. However, I consider that the appellant's assessment has understated both landscape and visual impacts in year one and has overstated the extent to which these impacts would reduce over time. This is partly because, on the appellant's assessment, this is not thought to be a valued landscape. However, I consider that the appellant has also placed too much reliance on the effects of existing trees and on new tree planting.
36. Although there are large trees adjoining the site to the north, west and along part of the southern boundary, there are few large trees within the site. Following the felling of Oak 1 and Oak 2, which is discussed below, the remaining trees along the road frontage provide only a thin screen. This would be breached by the construction of the proposed access road which, together with its footways and junction radii, would open up views into the site. The extent of development in depth would be readily apparent in such views. The trees along the northern boundary of the cemetery are relatively small, with gaps between them. There are clear views through in summer and this boundary would be quite open in winter.
37. The UIM does not show extensive new planting along either the southern boundary or the eastern boundary. This is unsurprising because there is a lack of space for such planting. Amended layouts were submitted during the Hearing, which showed how the UIM might be amended to allow for buffer zones around Oak 1 and Oak 2. Whilst such buffer zones would provide green space on the site frontage, it seems unlikely that trees would be planted here due to the need to allow Oak 1 to regenerate.
38. Planting within private gardens cannot be relied on because future occupiers would have control over what, if anything, is grown there. Therefore, the main scope for tree planting would be street trees and planting within any public open spaces.

Whilst planting street trees is to be welcomed, the species selected would need to be compatible with a location in the public realm close to housing. Such trees would need to be clear stemmed with relatively compact crowns. It may be that public open space would provide scope for a few larger trees but this is unlikely to be sufficient to alter my conclusion, which is that the amount of development proposed would not leave sufficient space for significant tree planting, other than street trees. Consequently, I do not think that either the landscape or the visual impacts would change much over time. Moreover, even if there was more screening, hiding the scheme would not change my finding that the scale, form and character of the proposal would be out of keeping with its surroundings and would result in the loss of an area which makes a positive contribution to a valued landscape.

39. The Council and the appellant submitted various calculations of housing density on individual sites or areas. However, such calculations are dependent on the precise area chosen. I have attached greater weight to my assessment of the character and appearance of the relevant sites and areas on the ground.
40. I acknowledge that views of the scheme would be limited to the area around the site by adjoining woodland. However, landscape is experienced in a kinetic way by those living in and moving through the locality. The scale, form and character of the proposed development would be apparent to those living close to the site and to those passing by.
41. My conclusions on these matters stem from the amount of development proposed rather than the particulars of the UIM. I see no reason to think that an alternative layout for the same amount of development would have any less impact.

Conclusions on character and appearance

42. For the reasons given above, I conclude that the proposal would cause significant harm to the character and appearance of the area. It would fail to protect or enhance the valued landscape which it would be located within. This would be contrary to paragraph 187(a) of the Framework.
43. The appeal scheme would conflict with CS Policy CP3, which states that proposals should contribute to a sense of place in the way they integrate with their surroundings, and with Policy CP11 which seeks to protect the quality of the environment. It would also be contrary to MDD Policy TB21, which seeks to retain or enhance the character of the landscape, and with Policy CC03 which promotes the integration of development proposals with adjoining countryside.

Trees

Oak 1 and Oak 2 – background

44. Oak 1 and Oak 2 were large oak trees standing within the appeal site close to the boundary with Heathlands Road. Both trees were felled⁷ on or around 2 March 2024. The trees were cut at a height of around 0.9m above ground level. The Council made a TPO on 21 March 2024. There is no dispute that, as the stools were still alive at the time the TPO was made, they are subject to it. The planning application which is the subject of this appeal was submitted on 28 March 2024.

⁷ Inspector's note – the Council and the appellant disagree over whether the term "felled" or "coppiced" should be used. To my mind it does not matter which term is used. There is no dispute that most of each tree was cut down but the stool remains and is alive.

The stools remained in place at the time of my site visit and new shoots were growing from them.

45. The Council considers that Oak 1 is a veteran tree which was felled in order to facilitate the proposed development. On that basis, the Council argued that the proposal is contrary to paragraph 193(c) of the Framework which states that:

“development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused, unless there are wholly exceptional reasons and a suitable compensation strategy exists.”

46. The appellant stated that both trees were removed due to concerns for the safety of persons using Heathlands Road, because they had been shedding deadwood onto the highway. This was unrelated to the application so paragraph 193(c) was not engaged. The appellant also argued that Oak 1 was not a veteran tree, a matter that I shall return to below.
47. Whilst I appreciate that the trees were removed shortly before the planning application was submitted, the appellant gave evidence in person to explain the sequence of events leading up to the tree works on or around 2 March 2024. The appellant also submitted a statement from Pineridge Tree Care, who carried out the works, which set out their involvement from October 2023 onwards. Having regard to that evidence, I conclude that the works were carried out because of safety concerns. It follows that paragraph 193(c) was not engaged at that time. The Council argues that it was not necessary to fell the trees and that any safety concerns could have been addressed in a less drastic way. However, as the tree works were not a result of the proposal that is before me, it is not necessary for me to comment on that matter.

Is Oak 1 a veteran tree?

48. There is no dispute that, if Oak 1 was a veteran tree at the time it was felled, then it is still a veteran tree now because the stool is alive. The Framework defines ancient or veteran trees as those which are of exceptional biodiversity, cultural or heritage value because of their age, size and condition. The first point to note is that Oak 1 was identified as a veteran tree in the national Ancient Tree Inventory at the time it was felled. At the Hearing, the appellant sought to downplay the significance of the inventory. I appreciate that survey information may be estimated where surveyors do not have access to the land. Nevertheless, Government standing advice on veteran trees and development advises developers to use the inventory to help decide whether a proposal will affect ancient or veteran trees. To my mind identification of a tree in the inventory is an important starting point, although not necessarily determinative where there is clear evidence to the contrary.
49. Age and size are closely related. Guidance published by the Woodland Trust includes a chart which relates the girth of a tree to age and classification.⁸ Girth is normally measured at 1.5m above ground level. This presents a practical problem when a tree has been felled. On 22 May 2025, the Council measured the stool and found the diameter to be 1.8m. On 10 June 2025, the Council made a further site visit and measured the girth of the stool to be 5.78m. At the Hearing, the Council

⁸ Figure 1.3 - Ancient and other veteran trees: further guidance on management (Appendix CH05 to the Council's Statement)

pointed out that the measurements were taken at 0.9m above ground level, above the root flare. Therefore, it was suggested, these measurements were unlikely to be much different from what they would have been at 1.5m. In addition, the Council produced a photograph from before the tree was felled which indicates that the tree did not taper much, if at all, above the root flare.⁹

50. The appellant's Compensatory Strategy for the Loss of Irreplaceable Habitat states that their tree consultant measured the diameter of the stool to be 1.5m and, on this basis, estimated that the diameter at 1.5m above ground level would have been 1.4m. This would equate to a girth of 4.3m. However, at the Hearing, the appellant's tree consultant stated that he had not measured the stump but had measured the actual diameter at 1.5m above ground to be 1.4m.¹⁰ Apart from the obvious inconsistency in the appellant's evidence, there is a further difficulty in that the only survey information before the Hearing from before the tree was felled was an arboricultural report dated 29 February 2024. However, the plan attached to that report is dated 19 March 2024 and does not appear to show Oak 1. The appellant was unable to provide any explanation for this discrepancy. I attach very little weight to the measurements contained in the schedule to the arboricultural report of 29 February 2024 because there is no corresponding plan to relate those measurements to any particular tree.
51. I saw the stool of Oak 1 on my site visit. Whilst it is not for me to make independent measurements, from what I saw the Council's measurements seem reasonable.
52. The appellant's evidence included an email from a second consultant (Mr Muir). However, there is no indication that Mr Muir ever saw the tree in question, either before it was felled or afterwards. Mr Muir bases his comments on the estimate of the girth of the tree made by the appellant's tree consultant, which I have commented on above. I therefore attach very little weight to this email.
53. Overall, I attach greater weight to the Council's evidence on this matter. With the trunk having been removed, it is not possible to achieve certainty. Nevertheless, I consider that the Council's figures are the best evidence before the Hearing, with the proviso that they may be a slight over-estimate as the tree may have tapered a little between 0.9m and 1.5m above ground level. Applying those figures to the chart referred to above, taking account of the fact that they may be a slight over-estimate, indicates to me that the girth of Oak 1 is consistent with it being a veteran tree.
54. With regard to the condition of the tree, the statement from Pineridge Tree Care referred to above notes the owner's concern about branches falling into the road in October of 2023. The appellant's arboricultural statement of fact refers to the situation in late February 2024, recording that Oak 1 and Oak 2 had shed significant diameter branches into the road. The appellant's tree consultant noted that they had significant decay in their major scaffolds. After the trees had been felled, the Council's landscape officer noted the presence of brown rot in the stool, although the trunk was not hollowed out.
55. Drawing all this together, I conclude that Oak 1 was a veteran tree when it was felled and that the stool is a veteran tree now.

⁹ Appendix 44 to the Council's statement – Image 5

¹⁰ Inspector's note – in answer to my question, Mr Harper stated that he would not measure a stump and that he had measured the tree at the correct height

The effect of the proposal on Oak 1

56. Although the application is in outline, access is not a reserved matter. The proposed site access design includes a 2m footway along the site frontage. I saw on my visit that such a footway would come very close to the stool of the tree. There would be a need to excavate into the rooting area in order to construct the footway. However carefully that were done, there would be further impact on a tree that has already been impacted by the felling that has taken place.
57. As discussed below, the presence of Heathlands Road is likely to have affected the way the tree roots have grown. Nevertheless, I saw that the footway would impact ground that is not currently hard surfaced. Even allowing for the possibility of localised narrowing of the footway to 1.5m, in my view this would cause significant further harm. Moreover, it would be necessary to cut back any shoots on the road-facing side of the stool in order to allow pedestrians to use the footway. This would hinder the restoration of the stool, as proposed in the appellant's Compensatory Strategy for the Loss of Irreplaceable Habitat.
58. The stool is irreplaceable habitat in the terms of paragraph 193(c) of the Framework. Construction of the footway would result in deterioration of that habitat which should only be permitted if there are wholly exceptional reasons and a suitable compensation strategy exists. The appellant advanced the argument that the need to protect users of Heathlands Road from falling branches amounted to a wholly exceptional reason. That may or may not have been a sound argument in relation to the felling of Oak 1. However, as explained above, the felling took place before the planning application that is before me was submitted. This argument cannot apply in circumstances where the tree has already been removed so there is no threat to road users. The deterioration that would flow from the appeal scheme would facilitate the construction of a footway to serve proposed housing. To my mind that is a commonplace reason, far from the wholly exceptional reasons contemplated in the Framework.
59. The appellant's Compensatory Strategy for the Loss of Irreplaceable Habitat seeks to address the felling of Oak 1. The evidence does not address compensation for the deterioration of habitat that would arise from construction of the proposed footway. If it had been necessary, I could have sought further information on that point. However, the Framework makes clear that suitable compensation is required in addition to wholly exceptional reasons. As there are no wholly exceptional reasons here, further information on compensation would not alter the outcome. The proposal would result in deterioration of irreplaceable habitat and, in the absence of wholly exceptional reasons, the Framework indicates that permission should be refused.

Buffer zones

60. The Council and the appellant disagreed on the extent of the buffer zone that should be created around Oak 1 to avoid further deterioration to irreplaceable habitat. The differences arose from differing assumptions about the diameter of the tree, which is used to calculate the buffer zone, and a disagreement as to whether an offset should be applied to account for the proportion of a circular zone that would be underneath Heathlands Road. For reasons given above, I give greater weight to the Council's estimate of the diameter of the tree.

61. Offsets are commonly applied when calculating root protection areas, to account for parts of a theoretical circular root protection area that may be beneath roads or other hard surfaces. This is to reflect an expectation that roots will have extended further in directions that are not affected by hard surfaces. The guidance on buffer zones for veteran trees does not comment on offsets. However, given that one of the important purposes of a buffer zone is to protect tree roots, it seems logical to apply the same approach and to apply an offset to account for the proportion of a circular zone that would be under Heathlands Road. The Council's approach includes such an offset, resulting in a 37m buffer zone within the site.
62. An update to the statement of common ground includes a plan (HD28) showing where a 37m buffer zone would extend to, superimposed on the UIM. For the reasons given above, the Council's estimate of the diameter may be a slight overestimate. I have taken into account that this would have the effect of reducing the extent of the buffer zone. The plan shows that a 37m buffer zone (or something of that order) would require the relocation of four of the houses shown on the UIM.

Effect on other trees

63. On the southern boundary there is a large oak (T102) which spreads over the site. The UIM showed a building within the spread of this tree. HD28 shows the buildings relocated, with a three storey block of apartments at this point. Even so, I saw that there would be a risk of the tree coming into conflict with the building, resulting in pressure to reduce the tree at a later date.
64. On the northern boundary, I saw that T37 is a tall and dense tree with several major limbs spreading deep into the appeal site. Other trees, including T36, extend well into the site. On the UIM, the gardens of the houses backing on to the northern boundary are largely within the spread of these trees. HD28 shows the houses moved away a little but this would not resolve the difficulties of placing houses close to very large trees. The siting shown (on either plan) would result in problems of overshadowing gardens, safety concerns, leaf and branch litter and damage to garages and garden structures. It is very likely that there would be pressure to reduce the trees, either immediately or over time, which would be hard to resist given the impact that they would have on the new occupants.

Conclusion on trees

65. The trees around the site, including Oak 1 and Oak 2, are covered by a TPO. Neither the UIM, nor HD28, demonstrate that the scale of the trees around the site has been adequately taken into account. The juxtaposition of dwellings and large trees as shown would not be sustainable over time and would be likely to result in harm to the TPO trees.
66. The appellant suggests that these are matters of detail which could be resolved at the reserved matters stage and/or through the imposition of conditions. The appellant relies on advice in the PPG relating to Grampian conditions which states that such conditions should not be used where there are no prospects at all of the action in question being performed.¹¹ However, this advice does not assist the appellant. First, the advice relates to a specific type of condition, known as a Grampian condition, which requires works on land that is not controlled by the applicant or that requires the consent or authorisation of another body. Tree

¹¹ PPG – Reference ID: 21a-009-20140306

protection conditions relating to the appeal site would not be Grampian conditions. In any event, the PPG says when a Grampian condition should not be used. It does not follow that such a condition should be used in every case where there is some prospect of the action being taken. That will be a matter of planning judgement for the decision maker in all the circumstances of the case.

67. In this case, I have to take an overall view on the merits of the proposal. In order to achieve a satisfactory relationship with the TPO trees to the north and south, and Oak 1 and Oak 2 to the east, it would be necessary to make very significant changes to the illustrative layouts that have been submitted. To my mind the appellant has failed to demonstrate that this amount of development could be accommodated on this site in a satisfactory manner without harm to protected trees. Granting permission in the terms sought would pose an unacceptable risk of harm to trees that are protected by a TPO. That risk would not be avoided by imposing conditions. The proposal would be contrary to MDD Policy CC03 which seeks to protect existing trees.
68. The proposal would be contrary to paragraph 193(c) of the Framework in that it would result in the deterioration of irreplaceable habitat, namely Oak 1 which is a veteran tree.

Biodiversity

Biodiversity Net Gain

69. A revised biodiversity net gain (BNG) matrix was submitted during the appeal process. The Council agreed with the revised baseline. The matrix showed that, post development, there would be a 39% net loss of area-based habitat units and a net gain of linear-based habitat units. However, as part of the BNG plan required under the Environment Act, it would be open to the appellant to purchase off-site habitat units. On this basis, the Council did not object to the fact that BNG would not be achieved on site.

Reptiles

70. The preliminary ecological appraisal identified that habitats recorded on and adjacent to the site would provide suitable shelter, commuting and hibernation opportunities for reptiles. The presence of common reptiles on site could not therefore be discounted. At the Hearing, the appellant's ecologist commented that it would have been disproportionate to carry out presence/absence surveys because the grassland that would be developed was not of high value to reptiles. It was suggested that there are standard approaches to mitigation that could be secured by condition. The Council pointed out that four species of reptiles have been recorded locally, namely adder, grass snake, common lizard and slow worm. The Council considered that a strategy for mitigating impacts on reptiles should have been submitted with the application.
71. Whilst a Strategy for Compensating Protected Species was submitted during the appeal process (HD9), this was a high level and generic document. It did not refer specifically to the appeal site, the species in question or any particular mitigation measures. I attach little weight to this document.
72. The preliminary ecological appraisal identified habitat creation measures that could be incorporated into the development. The measures identified were creation of

refugia and hibernacula and planting native scrub and grassland to increase foraging opportunities. However, I have commented above that the UIM shows that most of the land would be taken up with buildings, roads, driveways, footways, verges and private gardens. There would be limited space within the site in which to implement habitat creation.

73. I conclude that the proposal has not adequately considered how the impact on reptiles could be mitigated. There is an unacceptable risk that the proposal would be harmful to reptiles. The means of mitigation, and its likely effectiveness, are unclear. In these circumstances it would not be appropriate to rely on a condition to secure such mitigation. The proposal would be contrary to CS Policy CP7 and MDD Policy TB23, which together seek to ensure that development which may harm species of principal importance will only be permitted where mitigation measures can be put in place or appropriate compensation measures are provided.

Bats

74. The preliminary ecological appraisal noted that the site provides abundant foraging and commuting opportunities for bats including grassland, hedgerows, scrub, and adjacent woodland. It also noted that the hedgerows and adjacent woodland will provide significant linear features providing optimal commuting opportunities, such that it is likely that bats will forage and commute in the area. Moreover, a separate survey at Sulby Croft, which immediately adjoins the appeal site, identified six bat species at or over that property, with a maximum of 48 bats emerging from the side of the house during a dusk survey in the summer of 2024.¹² The survey report concluded that there was an active maternity roost at the property.
75. At the Hearing, the appellant's ecology consultant confirmed that no site-specific bat survey had been undertaken. Given the acknowledged suitability of the site for foraging and commuting bats and the presence of an active maternity roost on adjoining land, in my view that was a significant omission. In the absence of survey information, I can only conclude that it is probable that there is an active commuting/foraging route across the site, most likely adjacent to the adjoining woodland to the north.
76. The appellant argued that the linear features present adjacent to the site would remain and that mitigation could be provided by way of a sensitive lighting strategy, secured by a condition. However, although the linear features would remain, they would be affected by the proximity of housing. The condition seeks to control "*external lighting*." I can appreciate that such a condition could require sensitive street lighting and, potentially, external lighting installed on new houses by the developer. However, in practical terms, it could not control light spill from inside dwellings. Nor could it prevent householders from installing their own amenity and/or security lighting in the future. This is particularly significant given that there are likely to be many plots with houses backing on to woodland edges which are likely to be commuting routes for bats.
77. The appellant suggested that it would be possible to create dark corridors along the woodland edge. However, in my judgement that would be unachievable due to a lack of space, given the amount of development proposed.

¹² Inspector's note – the Sulby Croft survey was carried out by different consultants although for the same client. In answer to my questions, Ms Reid said she had not been aware of the Sulby Croft survey before the Hearing although she was aware that there is a maternity roost there.

78. I conclude that the proposal does not provide an adequate understanding of the way bats are currently using the site. However, there is clear evidence that the site is likely to be actively used for commuting and foraging. There would be an unacceptable risk of significant harm to bats. I do not consider that the suggested lighting strategy and dark corridors would provide effective mitigation due to light spill from domestic properties and because there would be insufficient space for dark corridors. My conclusions on these matters stem from the amount of development proposed rather than the particulars of the UIM. I see no reason to think that an alternative layout for the same amount of development would enable effective dark corridors to be created.
79. The proposal would be contrary to CS Policy CP7 and MDD Policy TB23. It would also be contrary to the Framework, which states that if significant harm to biodiversity cannot be avoided, adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused.

Thames Basin Heaths Special Protection Area

80. The proposal would create new housing within 5km of the Thames Basin Heaths Special Protection Area (TBH SPA). It is therefore necessary to consider whether the new residents would have an adverse impact on the TBH SPA, through the potential for additional recreational pressure. A number of local planning authorities have formed the Thames Basin Heaths Joint Strategic Partnership with a view to enabling a strategic approach to avoiding such impacts. The TBH SPA Delivery Framework provides a way in which individual development proposals can contribute proportionately to the delivery of suitable alternative natural greenspace (SANG).
81. The Agreement would make provision for part of a nearby strategic SANG to be allocated to the appeal scheme. In addition, there would be a financial contribution to strategic access management and monitoring. The Council is satisfied that these measures would provide suitable avoidance and mitigation measures, consistent with the Delivery Framework. As noted above, reason for refusal (10) relating to the TBH SPA was not pursued. I see no reason to take a different view. I consider that proposal would accord with South East Plan Policy NRM6 and CS Policy CP8, which together seek to protect the TBH SPA.

Whether the site is a sustainable location

Active travel

82. The site is not within or adjoining any defined settlement although there is ribbon development along Nine Mile Ride. The only facilities close to the site are a church, a primary school and a tennis club. There is a garden centre which offers a form of food shopping and some other businesses around 0.8km to the north. However, the intervening section of Heathlands Road has no footways and limited scope for pedestrians to take refuge clear of the carriageway. It feels like an unsafe environment for walking and I consider that few would use it as a walking route.
83. There are facilities in Crowthorne, including primary schools and a local shopping parade with a Tesco Express. The walking distance to the shops is 1.8km, which in itself would be a deterrent to some. Moreover, the route is not attractive for pedestrians, particularly along Nine Mile Ride where the combination of a narrow footway and busy traffic makes for an uncomfortable walking experience. The

combination of distance, unattractive walking environment and a relatively limited retail offer at the destination indicates to me that, in practice, very few residents at the appeal site would choose to walk to the Crowthorne shops. Similarly, very few would walk to the Crowthorne primary schools.

84. Crowthorne, Wokingham, and Wokingham train stations are all within cycling distance. However, the roads are not attractive for cycling because of busy traffic and a lack of dedicated cycle facilities. Hatch Ride is a promoted cycle route which runs towards Wokingham from Heathlands Road. The route follows a track through Gorrick Plantation. No doubt this would be an attractive leisure route during fine weather. However, I doubt it would be attractive as a year round commuting route. Overall, I consider that only the most experienced and determined cyclists would make a significant number of trips from the appeal site by cycle.

Public transport

85. Bus route 125 runs along Nine Mile Ride, providing services to Crowthorne and Wokingham. The Council estimates that the walking distance to the stop from the appeal site is 0.8km. That distance would, in itself, deter some from choosing to use bus services. Moreover, the service level is not frequent. The first bus to Crowthorne is not until around 10:00 and thereafter the buses are around every two hours until early evening. The Council's transport witness commented that this service provides an opportunity to make some shopping and leisure journeys by public transport but would not be suitable for most trips for work or education. I agree.
86. National rail services can be accessed at Wokingham, Bracknell and Sandhurst, amongst other locations. There are therefore opportunities to make longer trips by rail although, for the reasons given above, it is likely that most trips to the stations would be by car.

Transport measures

87. The main transport measures proposed are a footway on the west side of Heathlands Road, from the site access to Nine Mile Ride, a bus service enhancement contribution, a contribution to enhance two bus stops and a travel plan. The footway would connect to the site to existing footways on Nine Mile Ride which would improve pedestrian accessibility to the appeal site. However, in my view this is unlikely to have much effect on the travel choices made by future residents because there are so few facilities nearby.
88. The Agreement provides for a "*bus service enhancement contribution*." However, the detailed wording of the Agreement makes clear that enhancing services is only one potential use of this contribution. It could be used simply to maintain the existing level of service, which is itself dependent on public subsidy. Although the Council has a Bus Service Improvement Plan, route 125 is only one of a number of services to be considered for enhancement. The operator of route 125 has advised that enhancing the service interval would cost £220,000 each year, whereas the contribution would amount to £44,800 for one year only. This could only be effective if pooled with other contributions. However, there was no evidence before the Hearing that significant further development is likely to come forward in relevant locations to generate such contributions. In my view it is more likely that the contribution would be used to maintain the existing level of public subsidy. This would not improve on the current situation and would be temporary.

89. Improving the nearest bus stops would no doubt be useful in itself. However, without any changes to the services on offer, it is unlikely to make a material difference to transport choices.
90. The Framework Travel Plan submitted with the application is mainly directed to providing information to new residents that may encourage take up of sustainable travel options. The difficulty with that approach in this case is that the opportunities for sustainable transport options would be limited, so it is hard to see how merely providing information would have much practical effect on the transport choices made by future residents.
91. Overall, I consider that the proposed transport measures would do little to improve the ability of new residents to choose sustainable transport modes. I attach only limited weight to the transport measures contained in the Agreement.

Conclusions on transport options

92. Drawing all this together, I consider that the proposal would be highly dependent on transport by car. In the terms of paragraph 110 of the Framework, I do not consider that this is a sustainable location. Nor would it be made sustainable through the proposed transport measures. The proposal would not limit the need to travel, because there are so few facilities nearby. Nor would it offer a genuine choice of transport modes, other than to a very limited extent. I note that the Framework states that opportunities to maximise sustainable transport solutions will vary between urban and rural areas. Nevertheless, looking at this appeal scheme in the round, I consider that it is contrary to the policies of the Framework that promote sustainable transport.
93. The proposal would be contrary to CS Policy CP1, which requires proposals to demonstrate how they would reduce the need to travel, particularly by private car. It would also be contrary to Policy CP6, which seeks to manage travel demand by locating development where there will be choices in the mode of travel and where the distance people need to travel will be minimised.

Living conditions

94. The Council was concerned that some plots shown on the UIM would not meet the minimum garden length of 11m which is set out in the Borough Design Guide (BDG) Supplementary Planning Document. An alternative version of the layout (HD28) showed how the scheme could be adjusted to meet that minimum. Given that this is an outline application, I consider that it has been shown that the Council's objection in relation to the BDG (if that were the only matter of concern) could be resolved at reserved matters stage.
95. I commented above that the garden depths shown on the UIM and HD28 would not create a sustainable relationship with protected trees, nor would they avoid harm to bats. Those are matters that I have taken into account elsewhere. I conclude that the Council's concerns in relation to the BDG are not a matter that in itself weighs against the appeal.

Other matters

96. Interested parties raised a number of matters, most of which have been covered above. In addition, there were concerns about the safety of the proposed access. An access road would be created in the position of an existing field gate. I saw that

there is scope to create adequate visibility splays at this point. This could be secured by condition. The Council has not objected on grounds of highway safety. I share that view.

97. The Buckinghamshire, Oxfordshire and Berkshire West Integrated Care Board sought a developer contribution to primary health care facilities if the appeal was to be allowed. However, as I have decided to dismiss the appeal on other grounds, it is not necessary for me to comment further on this matter.

Conclusions

The development plan

98. MDD Policy CC01 sets out a presumption in favour of sustainable development which is in similar, though not identical, terms to that set out in the Framework. It states that where relevant policies are out-of-date at the time of making the decision then the Council will grant permission unless material considerations indicate otherwise. I have concluded above that that Policies CP9, CP11 and CC02 are inconsistent with the delivery of the level of housing that is required by the Framework. They are therefore out-of-date. These are important and relevant to the determination of the appeal because they relate to the spatial strategy of the plan. The balancing exercise set out at 2(a) and 2(b) of the policy is therefore engaged.
99. Part 2(b) of the policy requires the decision maker to take account of whether specific policies in the Framework indicate that development should be restricted. In this case I have found that the proposal would be contrary to policies of the Framework relating to the natural environment because it would result in the deterioration of irreplaceable habitat, namely the veteran tree Oak 1. The Framework says that such development should be refused unless there are wholly exceptional circumstances, which there are not. It follows that there are material considerations which indicate that development should be restricted, so the proposal would be contrary to Policy CC01.
100. Even if Part 2(b) did not indicate that development should be restricted, it would be necessary to determine whether any adverse impacts of planning permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. If that exercise were undertaken, I consider that the benefits would be:
- delivery of 49 dwellings, to which I attach significant weight having regard to the current position on housing land supply;
 - delivery of 20 affordable housing units, to which I attach significant weight having regard to the need for such units;
 - economic benefits, to which I attach moderate weight because these would largely be during the construction phase; and
 - creation of public open space, to which I attach limited weight, first because the amount of such space is not yet known, and second because the site is relatively isolated and any open space within it would meet the needs of new residents rather than the wider community.
101. The provision of a footway along Heathlands Road, as far as the site access, would provide pedestrian access for new residents but would have little benefit to

the wider community. There would be a net loss of BNG area-based habitat units on site. The requirement for 10% net gain would need to be met by off-site credits at an unknown location. I regard these as neutral factors.

102. The adverse impacts would be:

- conflict with the spatial strategy, to which I attach moderate weight because, although the spatial strategy is out-of-date, the proposal would be poorly located in relation to the existing pattern of development;
- harm to the character and appearance of the area, to which I attach significant weight because, although the impacts would be localised, this is a valued landscape, which the Framework seeks to protect and enhance, and because the proposal would result in a significant level of harm;
- that the site is not a sustainable location, to which I attach significant weight because the Framework emphasises the importance of promoting sustainable transport;
- impacts on bats and reptiles, to which I attach very significant weight, in particular because there would be significant harm to bats, which are protected species, and the Framework states that planning permission should be refused if significant harm to biodiversity cannot be avoided, mitigated or compensated for; and
- deterioration of irreplaceable habitat, to which I attach very significant weight because the Framework states that planning permission should be refused where development results in such deterioration unless there are wholly exceptional reasons.

103. I consider that the adverse impacts would significantly and demonstrably outweigh the benefits. It follows that the proposal would be contrary to Policy CC01.

104. For the reasons given above, I consider that the proposal would also be contrary to the following development plan policies:

- CP1 – sustainable development;
- CP3 – general principles for development;
- CP6 – managing travel demand;
- CP7 – biodiversity;
- CP9 – scale and location of development proposals;
- CP11 – proposals outside development limits;
- CC02 – development limits;
- CC03 – green infrastructure, trees and landscape; and
- TB23 – biodiversity and development.

105. The proposal would accord with South East Plan Policy NRM6 and CS Policy CP8 relating to the TBH SPA. The statement of common ground identifies other relevant

development plan policies, such as those relating to infrastructure, housing mix, sustainable design and other development management matters. No party suggested that these policies would be breached or that they could not be addressed at reserved matters stage. Nevertheless, the proposal would be contrary to a number of important policies, as set out above. I conclude that the proposal would be in conflict with the development plan as a whole.

Other material considerations

106. The Framework is a material consideration. The approach to decision making set out in paragraph 11(d) is engaged because of the housing land supply position. The policies most important for determining the application are therefore deemed to be out of date. However, irreplaceable habitats are assets of particular importance, as identified in footnote 7. In my view the deterioration of irreplaceable habitat, namely Oak 1, provides a strong reason for refusing the proposal. This is because I have found that there would be significant harm to Oak 1 and because the Framework states that planning permission should be refused where development results in deterioration of irreplaceable habitat unless there are wholly exceptional reasons.

107. However, even if this did not provide a strong reason for refusal, it would then be necessary to carry out the balancing exercise set out in paragraph 11(d)(ii). The benefits and adverse effects would be as identified above. It would also be necessary to have particular regard to relevant key policies of the Framework, as detailed in that paragraph. I consider that the policies that seek to direct development to sustainable locations are particularly pertinent to the circumstances of this appeal, so this could only add weight to the adverse effects. The outcome of that exercise would be the same as for Policy CC01. The adverse impacts would significantly and demonstrably outweigh the benefits. It follows that the Framework does not indicate a decision other than in accordance with the development plan.

Overall conclusion

108. For the reasons given above, the appeal should be dismissed.

David Prentis

Inspector

APPEARANCES

<i>For the Appellant</i>	
Sioned Davies	Counsel, No 5 Chambers
Tom Ryan BSc (Hons) MsC MRTPI	ET Planning
David Wetherill BA(Hons) MsC MRTPI	ET Planning
Jon Harper Cert Arb (RFS)	Harper Tree Consulting
Melissa Reid BSc(Hons) MRes MRSB	Ecology consultant
Chris Saunders IEng FIHE	Motion
Stephen Kirkpatrick BSc BLD CMLI	Scarp Landscape Architecture Ltd
Edward Mather BA(Hons) DipArch MA ARB RIBA	Colony Architects
Kayleigh Chapman	Gately Legal
<i>For the Council</i>	
Joanna Carter LLB(Law) LLM(Law) MA MRTPI	Planning Officer, Wokingham Borough Council
Alan Lewis CEng FIHE CMILT VR	Highways, Wokingham Borough Council

Chris Hannington BSc(Hons) MPhil CMLI MRTPI	Planning, Trees and Landscape, Wokingham Borough Council
Duncan Fisher	Environmental Services, Wokingham Borough Council
Geraldine Medrano Prince 2 Practitioner	Housing, Wokingham Borough Council
Amanda Pierce BA(Hons)(Law)	Legal services, Wokingham Borough Council

DOCUMENTS

<i>Documents submitted on Day 1 and Day 2</i>	
HD1	Appearances for the appellant
HD2	Appearances for the Council
HD3	HRA Plan for SANG (1 of 2) (Appellant's Appendix 7)
HD4	HRA Plan for SANG (2 of 2) (Appellant's Appendix 8)
HD5	Compensation Strategy for the Replacement of Irreplaceable Habitat (trees) 20 May 2025 (Version 2) (Appellant's Appendix 10)
HD6	Biodiversity Net Gain Baseline Assessment by Arbtech 7 June 2025
HD7	Updated Biodiversity Net Gain Metric 7 June 2025
HD8	Photograph of a tree being removed from the site on 3 March 2024 (Appellant's Appendix 17)
HD9	Strategy for Compensating Protected Species (Appellant's Appendix 20)
HD10	Email from hrclegal 3 June 2025 (Appellant's Appendix 22)
HD11	Statement by Pineridge Tree Care (undated) (Appellant's Appendix 23)
HD12	Article from Wokingham Today about storm damage in Heathlands Road (Appellant's Appendix 24)
HD13	Email from the Woodlands Trust 17 June 2025 (Appellant's Appendix 25)
HD14	Plan showing Appellant's calculation of buffer zone (21m) based on 1400mm diameter (Appellant's Appendix 12)
HD15	Plan showing potential development if Appendix 12 arises (Appellant's Appendix 13)
HD16	Plan showing Appellant's calculation of RPA (Appellant's Appendix 14)
HD17	Plan showing potential development if Appendix 14 arises (Appellant's Appendix 15)

HD18	Extract of updated indicative masterplan showing potential revised position of the proposed compensation tree with a 21m buffer (Appellant's Appendix 16)
<i>Documents submitted during the adjournment</i>	
HD19	Letter from ET Planning 4 July 2025
HD20	Note on hearing documents HD14, HD16 and HD18 by Harper Tree Consulting 27 June 2025
HD21	Design statement relating to additional hearing documents HD15, HD17 and HD18 by Colony 4 July 2025
HD22	Mr Hannington's note on the protection of newly cut ancient and veteran coppice stool 3 July 2024
HD23	Letter from ET Planning 18 July 2025
HD24	Response to HD22 by Harper Tree Consulting 16 July 2025
HD25	Response to HD22 by Colony 16 July 2025
HD26	Tree Root Protection Areas and Buffers Rebuttal Statement by Mr Hannington July 2025
HD27	National Forest Inventory of Great Britain Survey Manual: 3rd cycle April 2023 (Mr Hannington's Appendix 26)
HD28	Drawing 919-03-21 Rev Ee (showing 37m buffer zone) with associated emails from ET Planning 8 August 2025 and the Council 6 August 2025
<i>Documents submitted on Day 3</i>	
HD29	Update to Statement of Common Ground with Five Year Housing Land Supply Statement and Buffer Zone drawings attached
HD30	Statement of Common Ground on Bus Contributions
HD31	Day 3 version of S106 Agreement
HD32	Appellant's application for costs
HD33	Council's application for costs
<i>Submitted after the Hearing</i>	
	Appellant's rebuttal of the Council's cost application
	Council's rebuttal of appellant's costs application
	Appellant's final comments on costs
	Council's final comments on costs
	Completed S106 Agreement dated 1 September 2025

Costs Decision

Hearing opened on 18 June 2025

Site visit made on 13 August 2025

by David Prentis BA BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th September 2025

Costs application in relation to Appeal Ref: APP/X0360/W/25/3359928

Land at Heathlands Road, Wokingham RG40 3AR

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Maverick Properties Ltd for a partial award of costs against Wokingham Borough Council.
 - The appeal was against the refusal of outline planning permission for the redevelopment of the site for 49 dwellings with associated access, infrastructure, open space and landscaping (All matters reserved except means of access into the site).
-

Decision

1. The application for an award of costs is refused.

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The appellant applied for a partial award of costs in relation to two separate matters.

Reason for refusal No 4 (trees)

4. The reason for refusal stated that the proposal had failed to demonstrate that 49 dwellings could be accommodated on the appeal site whilst protecting trees, including trees protected by a Tree Preservation Order or having veteran tree status. For reasons given in my appeal decision, I have agreed with this reason for refusal. It follows that the Council was able to substantiate the reason for refusal.
5. The appellant argues that the Council acted unreasonably by introducing a new line of argument in its statement of case relating to the concept of adjusting the buffer zone for Oak 1 to reflect the presence of Heathlands Road. The first point to note is that the officer's report made clear that one of the Council's concerns was that a buffer zone would be needed around the veteran tree. The concept of buffer zones in general could not have come as a surprise to the appellant, who was professionally advised on trees. Moreover, the formula for calculating such zones is well known to those who deal regularly with such matters. I do not think it was necessary for the Council to set out its own calculation of the buffer zone prior to its statement of case.

6. It must be kept in mind that the appellant's statement of case accepted that Oak 1 is a veteran tree. Whilst this point is not agreed by the appellant now, I have set out my reasons for this finding in my decision on the Council's application for costs. Having accepted that Oak 1 is a veteran tree, the appellant (acting reasonably) could have been expected to set out its assessment of the appropriate buffer zone in its statement of case. For whatever reason, it did not do so. The Council's assessment of the buffer zone was set out in its statement of case, which was an appropriate time to do so.
7. There was an inconsistency in the Council's statement of case on Landscape and Trees relating to the extent of the buffer zone. Plan 1 showed a radius of 54m, whereas the text at paragraph 9.47 indicates a radius of 37m. Plainly one of these dimensions must be wrong. Reading the statement as a whole, it is reasonable to infer that 37m is the correct figure because the basis for calculating it is set out at paragraphs 9.36 to 9.45. If the appellant had been in any doubt on this point they could have checked with the Council.
8. The Council later confirmed that Plan 1 was included in error, an error for which an apology was given. I have no reason to doubt that the inclusion of Plan 1 was simply a mistake. Mistakes can happen, even in carefully prepared professional evidence. Any suggestion that this was done deliberately to make difficulties for the appellant is unwarranted. I do not consider that this particular mistake amounted to unreasonable behaviour.
9. Even if the mistake was unreasonable, it did not result in wasted expenditure in the appeal process. The appellant's evidence on buffer zones was set out in documents HD14 to HD18. These documents were not predicated on a 54m radius, rather they set out the appellant's approach to calculating the buffer zone as an alternative to the Council's approach.
10. The appellant complains that the Council did not correct the error in its statement until 1 July 2025, which was after Hearing sessions dealing with trees. This was said to be irregular and prejudicial. However, this complaint does not take account of the particular way in which the evidence on trees was examined. If the Hearing had followed the timetable attached to my pre-hearing note, trees would have been discussed on the morning of Day 1. In the event that did not happen because, at the start of Day 1, the appellant sought to introduce a considerable amount of new evidence. This included HD14 to HD18, amongst other matters. To make best use of Hearing time, I decided that the Council and I should have the opportunity to consider the new documents during the adjournment at the end of Day 1.
11. When the Hearing resumed on Day 2, the Council indicated that it was content for HD8 to HD13 to be accepted as Hearing documents. However, I was concerned that HD14 to HD18 contained new technical material which the Council had not had an adequate opportunity to consider and respond to. To enable the rest of the evidence to be discussed, I suggested that HD14 to HD18 could be examined by way of a written procedure. The Council and the appellant agreed to this suggestion. At that stage it was anticipated that the rest of the evidence would be discussed on Day 2. Later that day it became apparent that a third day would be needed. Even so, the Council and the appellant stated that they still preferred to deal with the topic of buffer zones during the adjournment through the written procedure that had by now been put in place.

12. Matters relating to trees were discussed on Day 2. These included whether Oak 1 is a veteran tree, the reasons why it was felled, the proposed compensation strategy, the implications of building a footway and the effect of the proposal on trees other than Oak 1. The calculation of the buffer zone was not discussed on Day 2 because this was to be addressed through the written procedure. The Council's confirmation that the 54m dimension was included in error was set out in the Council's note "*Protection of newly cut ancient and veteran coppice stool*" which was duly submitted in accordance with that written procedure.
13. In summary, the appellant can have no complaint that buffer zones were examined through a written procedure during the adjournment between Day 2 and Day 3. First, because the need for the written procedure arose from the appellant's actions in submitting late evidence and, second, because the appellant agreed to the written procedure being used for the evidence on buffer zones.
14. Finally, the appellant argues that the buffer zone (of whatever size) could have been addressed at reserved matters stage and/or through the imposition of a planning condition. That is a matter that goes to the substance of the case. In my appeal decision, I have considered that argument and concluded that the appellant failed to demonstrate that the appeal scheme could be accommodated on this site in a satisfactory manner without harm to protected trees.
15. In relation to the first matter, I conclude that the conditions for a partial award of costs have not been met.

Reason for refusal No 3 (wildlife)

16. The first limb of the reason for refusal, which referred to Gorrick Plantation, was not pursued. The second limb stated that the appellant had failed to demonstrate that the development would not result in harm to species of principal importance, namely reptiles and bats. For reasons given in my appeal decision, I have agreed with this limb. It follows that the Council was able to substantiate the reason for refusal.
17. The appellant argues that the Council confirmed that it would not be defending reason for refusal No 4 in an email dated 13 May 2025, only to contradict itself by seeking to maintain the second limb of the reason in an email dated 19 May 2025. The Council seeks to argue that the email of 13 May 2025 did not withdraw the second limb.
18. The position is not entirely clear cut because the email of 13 May 2025 went on to recommend submission of a compensation strategy for species of principal importance together with mitigation measures for bats. However, the email started with an overview of various refusal reasons which were then under discussion including the following:

"RfR3 – I can confirm that this RfR is withdrawn"

19. In my view the appellant was entitled to rely on a plain reading of those words. It seems to me that the wording used was probably an error, in that the author intended to say that the first limb of RfR3 was withdrawn. Whilst not every error amounts to unreasonable behaviour, in my view this one did because it had a direct bearing on what the main issues in contention would be at the forthcoming Hearing.

20. That said, the appellant did not incur any unnecessary expense. The Council's true position was set out in the email of 19 May 2025. There is nothing before me to show that the appellant incurred material expense during this short period or as a result of the Council's error. The appellant's approach was that these matters could be satisfactorily addressed through conditions. The evidence on which that approach was founded was in documents that pre-date the Council's email of 13 May 2025.
21. The proposition that these matters could have been addressed through conditions goes to the substance of the case. My reasons for not following the appellant's approach are set out in my appeal decision.
22. In relation to the second matter, I conclude that the conditions for a partial award of costs have not been met.

David Prentis

Inspector

Richborough

Costs Decision

Hearing opened on 18 June 2025

Site visit made on 13 August 2025

by David Prentis BA BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th September 2025

Costs application in relation to Appeal Ref: APP/X0360/W/25/3359928

Land at Heathlands Road, Wokingham RG40 3AR

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Wokingham Borough Council for a partial award of costs against. Maverick Properties Ltd.
 - The appeal was against the refusal of outline planning permission for the redevelopment of the site for 49 dwellings with associated access, infrastructure, open space and landscaping (All matters reserved except means of access into the site).
-

Decision

1. The application for a partial award of costs is allowed in the terms set out below.

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The Council applied for a partial award of costs in relation to four separate matters.
4. The appellant also made an application for a partial award of costs against the Council. That application is the subject of a separate decision. In responding to that application, the Council sought to introduce new grounds for seeking a partial award against the appellant. However, applications for costs should be made at the Hearing, as the Council's original application was. I do not consider that it is appropriate to introduce further grounds at such a late stage. I have not therefore commented on the additional grounds in this costs decision.

Alleged reversal of position on whether Oak 1 is a veteran tree

5. The question of whether Oak 1 is a veteran tree was controversial at the Hearing. The appellant argued that it is not, whereas the Council argued that it is. The Council complains that the appellant accepted that Oak 1 is a veteran tree in its statement of case, later changing tack and arguing that it is not.
6. Reason for refusal (1) refers to some trees having veteran tree status so there can have been no doubt that this would be a live issue in the appeal. The appellant's statement of case is dated 31 January 2025. At paragraph 3.70 it says:

"It is noted the LPA has specifically highlighted the removal of a 'veteran tree' on site which was not originally included on the tree survey and subsequent

plans. This was not originally included as the tree was felled prior to the submission of the application and what remains on site is a stump (as shown in the Officer Report)."

7. The appellant seeks to rely on the use of quotation marks around the word "veteran" to show that the appellant was not necessarily accepting the Council's position. However, the document must be read as a whole. Paragraph 3.71 refers to *"the removal of the veteran tree..."*, paragraph 3.72 acknowledges that there are implications for paragraph 193 of the National Planning Policy Framework which would flow from the tree being a veteran, and paragraph 3.76 states that *"owing to BNG regulations the baseline date for the calculation has to consider the site prior to the removal of the veteran tree."*
8. The nub of the appellant's case is set out at paragraph 3.73 which states that:

"It is considered in the first instance that paragraph 193 of the Framework does not apply in this case as it is clear the removal of the tree was done for external reasons unrelated to the development and its loss/deterioration is not "resulting" from the appeal development itself."
9. The statement of case does not expressly state that the appellant considered that Oak 1 was not a veteran tree. Reading the statement as a whole, it appears to me that the appellant accepted that the tree was a veteran but maintained that the felling was not related to the development so paragraph 193 of the Framework was not engaged.
10. This is consistent with the Biodiversity Net Gain Baseline Assessment (BNGBA), which states that the report considers the habitats on site when the Preliminary Ecological Assessment was undertaken in October 2023. The BNGBA includes two extra large trees, *"one of them being an ancient/veteran tree"*¹. The appellant suggests that the BNGBA was merely looking at a worst case scenario. However, my reading of the document is that the authors were describing the factual position on the ground as they understood it.
11. The Council only became aware that the point was in dispute when it received the Compensatory Strategy for the Replacement of Irreplaceable Habitat (trees) on or around 29 May 2025. This document was submitted, together with others, outside the appeal timetable, too late for it to be addressed in the Council's statement. In the interests of fairness, I allowed the Council to submit a Supplementary Statement of Case (SSoC) to respond to this and other matters.
12. The PPG gives examples of types of behaviour which may give rise to a procedural award against an appellant.² These include introducing fresh evidence at a late stage, necessitating preparatory work that would not otherwise have been undertaken, and prolonging the proceedings by introducing a new issue. In this case I consider that the appellant acted unreasonably by changing its position on the status of Oak 1 at a late stage. This caused the Council to incur unnecessary expense in that there was additional work in the preparation of its SSoC and additional time taken at the Hearing debating this matter³.

¹ Paragraph 2.2 of HD6

² PPG – Reference ID: 16-052-20140306

³ Inspector's note – The SSoC included a Rebuttal – Landscape and Trees which addressed the status of Oak 1. I estimate that about an hour and a half of hearing time was taken debating whether or not Oak 1 is a veteran tree.

13. The conditions for a partial award of costs have therefore been met. The terms of the award will reflect the fact that the Council's SSoC, and discussion at the Hearing, covered matters other than the status of Oak 1.

Late submission and withdrawal of Parameter Plan 919-02-20

14. The parameter plan was one of the documents submitted by the appellant on or around 29 May 2025. This was shortly before the Council's statement was due to be submitted. The Council sought advice from the Planning Inspectorate as to how, if at all, this document was to be treated. The Council was advised that the parameter plan was not considered to be an amendment to the appeal scheme because the appeal related to an outline application. However, it was additional information that had been submitted at a late stage. The Council was therefore given an opportunity to comment on the parameter plan in its SSoC.
15. The Council had various criticisms of the parameter plan which was said to be inconsistent with the updated indicative masterplan. The merits of those points were not tested because the parameter plan was withdrawn shortly before the Hearing opened.
16. The parameter plan was intended to contribute to discussions between the Council and the appellant on conditions. Such discussions are a normal part of preparing for hearings. I do not consider that the plan amounted to significant new evidence or to a material change in the appeal scheme. Even though the plan was withdrawn before the hearing, I do not consider that this amounted to unreasonable behaviour. It is not therefore necessary for me to comment further on whether the Council incurred unnecessary expense.

Gifting land to St Sebastian's Primary School

17. The appellant offered to gift land to the adjoining primary school through the S106 Agreement. A draft Agreement contained an obligation intended to result in the transfer of land to the school for a minimal consideration. The appellant's statement suggested that this would be a benefit to which moderate weight should be attached. The Council's statement made clear that, in the Council's view, this obligation would not be compliant with Regulation 122 of the Community Infrastructure Levy Regulations 2010.
18. The appellant continued to ask the Council to engage with this matter until 15 June 2025, shortly before the Hearing. The reason given for withdrawing the obligation was that the school had not responded to consultation on the appeal. However, regardless of any discussions that there may have been with the school, there is nothing in the evidence before me to show that there was ever a reasonable basis for promoting this benefit as something that could properly be secured through a planning obligation. There was no evidence that such an obligation was necessary to make the proposal acceptable in planning terms. In my view it was unreasonable to ask the Council to continue to engage with the point once the Council's position had been set out in its statement of case.
19. That said, I do not consider that the Council incurred material wasted expense. Schedule 8 (as it then was) was not complex and, in any event, there is no evidence that the Council's legal team wasted any effort in engaging with the detail of the schedule. The Council's objection, which I agree with, was to the principle of the obligation.

Alleged failure to address reason for refusal No 3 (species of principal importance)

20. The Council's concerns related to effects on reptiles and bats. The appellant's position was that these matters could be addressed by planning conditions. No doubt there are sites and schemes where decision makers may properly conclude that such impacts could be addressed by conditions. For reasons set out in my appeal decision, I have found that this is not such a case. However, whilst I did not agree with the appellant's approach, I consider that they had an arguable case to make. I do not consider that there was unreasonable behaviour in relation to the substance of the appeal.
21. The Council had a further complaint in relation to a document entitled Strategy for Compensating Protected Species.⁴ This document purported to support the appellant's argument that these matters could be controlled by a condition. However, as noted in my appeal decision, this was a high level and generic document. It did not refer specifically to the appeal site, the species in question or any particular mitigation measures. Consequently, I attached little weight to it in my appeal decision. However, the document was so lacking in substance that, even if submitting it was unreasonable, it seems unlikely that the Council would have incurred material expense in dealing with it.

Conclusion

22. The conditions for an award of costs have been met in relation to the first of the four matters raised by the Council. They have not been met in relation to the other matters.

Costs Order

23. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Maverick Properties Ltd shall pay to Wokingham Borough Council the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in responding to the contention that the tree known as Oak 1 at the Hearing was not a veteran tree, (excluding any costs incurred in providing evidence in relation to the consequences of Oak 1 being a veteran tree, for example in relation to buffer zones), such costs to be assessed in the Senior Courts Costs Office if not agreed.
24. The applicant is now invited to submit to Maverick Properties Ltd, to whose agents a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

David Prentis

Inspector

⁴ HD9